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Attorney for Plaintiff  
WAYNE BERRY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;	)	Civ. No. CV03 00385 SOM-LEK
	)	(Copyright)
Plaintiff,	)	
	)	DECLARATION OF TIMOTHY J.
vs.	)	HOGAN IN SUPPORT OF REPLY
	)	TO MEMORANDA IN OPPOSITION
HAWAIIAN EXPRESS SERVICE,	)	TO MOTION FOR ENTRY OF
INC., a California corporation; et al.	)	PERMANENT INJUNCTION AND
	)	ORDER DIRECTING RETURN,
Defendants.	)	DESTRUCTION, OR OTHER
	)	REASONABLE DISPOSITION OF
	)	ALL COPIES OF FREIGHT
	)	CONTROL SYSTEM; EXHIBITS "A"
	)	THROUGH "I"
_____	)	

DECLARATION OF TIMOTHY J. HOGAN

I, TIMOTHY J. HOGAN, am an attorney licensed to practice before all the  
courts of the State of Hawaii and I make this declaration under the penalty of

perjury. All the statements herein are true and correct to the best of my knowledge, information and belief. If called upon to testify regarding the matters herein, I am competent and willing to do so. I respectfully submit this declaration in support of the Plaintiff's replies the memoranda filed in opposition to his Motion for Issuance of Permanent Injunction.

1. Attached hereto as Exhibit A is a true and correct copy of the Order Denying Plaintiff Wayne Berry's Motion for Preliminary Injunction filed herein on October 8, 2004.

2. Attached hereto as Exhibit B is a true and correct copy of the jury verdict in *Wayne Berry v. Fleming Companies, Inc.*, Civ. No. 01-00446 SPK/LEK. That judgment is has not been set aside nor modified.

3. Attached hereto as Exhibit C is a true and correct excerpt copy of the Chapter 11 Plan of Reorganization Debtors' and Official Committee of Unsecured Creditors' Third Amended and Revised Joint Plan of Reorganization of Fleming Companies, Inc. and Its Filing Subsidiaries Under Chapter 11 of the United States Bankruptcy Code Filed by FLEMING COMPANIES, INC. on May 28, 2004 in *In re Fleming Companies, Inc.* Bk. No. 03-10945 (MFW) (Bankr. Del.).

4. Attached hereto as Exhibit D is a true and correct copy of the Order Granting Motion of Wayne Berry for an Order Granting Relief from the Automatic

Stay or, in the Alternative, Relief from the Discharge and Permanent Injunction Provisions of Debtors' and Official Committee of Unsecured Creditors' Third Amended and Revised Joint Plan of Reorganization of Fleming Companies, Inc. and Its Filing Subsidiaries Under Chapter 11 of the United States Bankruptcy Code. Signed in Court on 7/26/2004 filed in the in *In re Fleming Companies, Inc.* Bk. No. 03-10945 (MFW) (Bankr. Del.) on July 27, 2004.

5. Attached hereto as Exhibit E is a true and correct copy of a screen print of the list of tables that are in the Berry FCS Logistics Data.mbd database that was previously authenticated in the Declaration of Wayne Berry filed herein on June 6, 2005 and used by the PCT own expert Martin Walker referred to in his Second Supplemental Report where he confirmed that the number of tables in the real Berry FCS is 69.

6. Attached hereto as Exhibit F is a true and correct copy of a screen print of the list of tables that are in the copy of the Original Logistics Data.mdb Access database that I received from Anne Lopez, ESQ, attorney for the PCT that purported to be the Original Logistics Data.mdb database that Mr. Walker referred to in his Second Supplemental Report. This program evidences 88 tables.

7. Attached hereto as Exhibit G is a true and correct excerpt copy of the Protective Order filed herein.

8. Attached hereto as Exhibit “H” is a true and correct copy of the Core-Mark Holdings Company, Inc.’s Form 10 K filed with the Securities and Exchange Commission and available on line on their web site. The document is highlighted for the Court’s convenience.

9. Attached hereto as Exhibit “I” is a true and correct copy of an email Bates Number 305-306 that was produced to me by Lyle Hosoda, the Employee Defendants’ counsel in this case in response to Mr. Berry’s discovery request.

DATED: Honolulu, Hawaii, January 19, 2006.

/s/ Timothy J. Hogan  
TIMOTHY J. HOGAN  
Attorney for Plaintiff WAYNE BERRY